



# HOUSE BILL 556: Tenancy in Com./E-Notary/Small Claims Changes.

2023-2024 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 20, 2024
<b>Introduced by:</b>	Reps. Blackwell, Wheatley, White, Fontenot	<b>Prepared by:</b>	Bill Patterson Kristen Harris Staff Attorneys
<b>Analysis of:</b>	Third Edition		

## OVERVIEW: House Bill 556 would:

- *Codify common law rules governing concurrent ownership of real property as tenants in common.*
- *Extend the expiration dates on emergency video notarizations and emergency video witnessing from June 30, 2024 to July 1, 2025.*
- *Amend confidentiality and geolocation technology requirements in North Carolina's notary public laws.*
- *Prohibit counties and cities from adopting certain ordinances or resolutions that would prohibit landlords from refusing to rent to tenants because a tenant's lawful source of income to pay rent includes funding from a federal housing assistance program.*
- *Clarify authorized litigation costs in summary ejectment matters.*
- *Provide that judgment in a small claim action can be rendered electronically by the magistrate.*
- *Begin the appeal period in a small claim action when a judgment is rendered by the magistrate.*

## CURRENT LAW AND BILL ANALYSIS:

### Section 1: Tenancy in Common

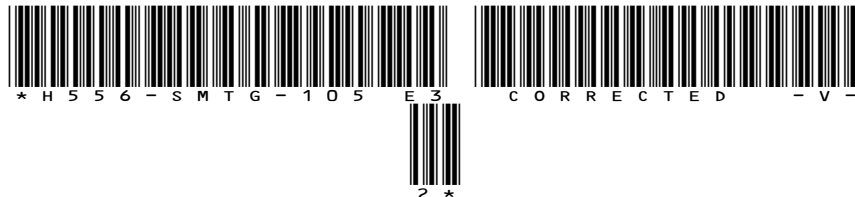
The rights and obligations of persons concurrently owning property vary depending on whether the concurrent ownership is in the form of a tenancy by the entirety, a joint tenancy, or a tenancy in common. The current law governing the first two of these types of concurrent estates is set forth in Article 5 (Tenancy by the Entirety) and Article 6 (Joint Tenancy) of Chapter 41 of the General Statutes, which were enacted by Session Law 2020-50, comprising a codification of applicable common law rules and a recodification of applicable statutory provisions.

**Section 1** would enact a new Article 7 of Chapter 41 of the General Statutes entitled "Tenancy in Common," which would codify common law rules applicable to tenancy in common.

New Article 7 would include the following provisions:

- G.S. 41-80 defines the following terms as used in Article 7: "actual ouster;" "constructive ouster;" "conveyance;" "cotenant;" and "property."

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- G.S. 41-81 sets forth the following characteristics of a tenancy in common:
  - Each cotenant holds a separate undivided interest in the property.
  - Unless otherwise specified in the instrument of conveyance, all cotenants' interests are equal, and each cotenant has a right to possession of the property.
  - Cotenants can take title from different instruments or at different times and do not have a right of survivorship.
- G.S. 41-82 delineates the circumstances under which a tenancy in common is created by a conveyance.
- G.S. 41-83 provides that each cotenant has the right to occupy and use the property subject to the rights of the other cotenants.
- G.S. 41-84 provides that an act by one cotenant relating to the property is not binding on another cotenant with respect to a third party unless it was authorized or ratified by the other cotenant, and that such an act is presumed to have been done by authority and for the benefit of the other cotenant.
- G.S. 41-85 provides that cotenants share proportionally in rents and profits received from third parties based on their respective interests in the property, and that if a tenant in common receives more than that tenant in common's share of rents and profits, a cotenant can bring an action for an accounting to recover the cotenant's share.
- G.S. 41-86 prescribes conditions under which a cotenant is entitled to reimbursement by the other cotenants for repairs or improvements to the property, or for payment of taxes due or payment of interest on an existing encumbrance of the property.
- G.S. 41-87 provides that Article 7 does not prohibit cotenants from entering into agreements respecting the property, including possession, sharing of rents and profits, reimbursement, and authority of a cotenant to bind another cotenant.
- G.S. 41-88 provides that a cotenant ousted by another cotenant may bring an action, other than an action for partition, seeking to compel the cotenant in possession to admit the ousted cotenant into possession.
- G.S. 41-89 prescribes the manner in which one cotenant can acquire another cotenant's interest in the property by a claim of adverse possession and requires such claimant to prove ouster or constructive ouster by clear and convincing evidence.
- G.S. 41-90 provides that a cotenant can convey or encumber that cotenant's undivided interest in the property without joinder of any other cotenant, and that the grantee of a cotenant's interest acquires only the grantor's interest and becomes a cotenant, regardless of whether the instrument of conveyance purports to convey the whole estate.
- G.S. 41-91 provides that cotenants occupy a relationship of trust and confidence as to the property that obligates them to put forth their best efforts to protect and secure the common interest as to the property, and that a fiduciary relationship among the cotenants arises only by conduct of a cotenant sufficient to create such a relationship.
- G.S. 41-92 sets forth rules for determining whether acquisition of title to the property by one tenant upon a sale of the property to pay the debt of one or more of the cotenants inures to the benefit of all the cotenants.

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- G.S. 41-93 provides that a cotenant's interest in the property may be sold to satisfy a debt owed by a creditor of that cotenant, and that such sale does not affect another cotenant's interest in the property.
- G.S. 41-94 provides that a cotenant can recover possession of the property for the benefit of all of the cotenants from a third party claiming adversely to the cotenants, and that in an action against a third party for trespass, a cotenant can recover only that cotenant's proportional amount of the total damages recovered.
- G.S. 41-95 provides that a tenancy in common is terminated by any of the following:
  - Partition of the property under Chapter 46A of the General Statutes.
  - Voluntary partition among cotenants conveying the property to themselves in separate tracts.
  - Conveyance of all interests to one grantee.
  - One cotenant's acquisition of title to the property by adverse possession.
- G.S. 41-96 provides that Article 7 does not apply to:
  - Property in a partnership subject to Chapter 59 of the General Statutes
  - An action for partition and its effect under Chapter 46A of the General Statutes.
  - A tenancy in common in personal property.
- G.S. 41-97 provides that Article 7 is supplemented by the common law of tenancy in common and principles of equity except to the extent they conflict or are inconsistent therewith.

## **Sections 2-6: Notary Public Laws**

S.L. 2023-57 (S552, Modifications to Notary Public Act) authorized a registered electronic notary public to also perform remote electronic notarial acts.

**Section 2** would extend the expiration dates on emergency video notarizations and emergency video witnessing from June 30, 2024 to July 1, 2025.

**Section 3** would clarify when a notary must maintain the confidentiality of a principal's documents and information and when the information may be disclosed including in response to a valid subpoena, court order, warrant, written request from the NC Department of the Secretary of State in connection with investigations into the conduct of a notary or a licensee or third-party vendor, or a written request from all principals to a specific notarial transaction.

**Section 4** would make a conforming change to the confidentiality provision in Section 3 and clarify that a notary public administers an oath to a "principal" not a "witness."

**Section 5** would no longer require an electronic notary applicant to provide geolocation technology for all remote electronic notarizations in order to receive a license. An applicant would only be required to have geolocation capability when the remotely located principal is conducting the remote electronic notarization via a device capable of identifying the geographic location of the remotely located principal at the time of the remote electronic notarization.

**Section 6** would require the Secretary of State to amend its permanent rules to include processes and requirements for the use of geolocation technology in remote electronic notarization if technology becomes available so that geolocation may be broadly utilized without GPS to determine the location of a remotely located principal.

## **Section 7: Preemption of Local Regulations**

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**Section 7** would prohibit counties and cities from enacting, maintaining, or enforcing an ordinance or resolution that prohibits the refusal to lease or rent a housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program. The provision could not be interpreted to prevent a county or city from enacting ordinances or resolutions applicable to owners or operators that receive funding or financial incentives from the county or city.

## **Section 8: Authorized Fees, Costs, and Expenses by Landlords**

G.S. 42-46 authorizes certain fees, costs, and expenses that the landlord can charge to the tenant, including late fees for rent five or more days overdue and the following out-of-pocket expenses and litigation costs:

- Filing fees charged by the court.
- Costs for service of process.
- Reasonable attorneys' fees actually paid or owed, pursuant to a written lease, not to exceed 15% of the amount owed by the tenant, or 15% of the monthly rent stated in the lease if eviction is based on a default other than the nonpayment of rent.

**Section 8** would clarify that late fees for past due rent could only be charged if the rental payment is five or more calendar days late, with the first day being the day after the rent was due. Additionally, for small claims hearings, it would allow landlords to charge reasonable attorneys' fees actually paid or owed, pursuant to a written lease, not to exceed 15% of the amount owed by the tenant or 15% of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent, and would award a landlord all actual reasonable attorneys' fees paid or owed for any summary ejection appeal by a tenant determined by the court to be frivolous, unreasonable, without foundation, or in bad faith or solely for the purpose of delay.

## **Section 9: Small Claim Appeal Period**

A judgment in a small claim action is "rendered" in writing and signed by the magistrate. The appeal period in a small claim action begins when the judgment is "entered" by a magistrate.

**Section 9(a)** would authorize judgment in a small claim action to also be rendered electronically by the magistrate.

**Section 9(b)** would amend provisions prescribing the start time for the appeal period in a small claim action to refer to the time when a judgment is "rendered" rather than to the time when the judgment is "entered."

**EFFECTIVE DATE:** Sections 3, 4, and 5 of this act would become effective July 1, 2024. The amendments contained in Section 8 of this act are intended to be clarifying of the General Assembly's intent under previous amendments to this statute. Section 9 of this act would become effective October 1, 2024 and would apply to judgments rendered on or after that date. Except as otherwise provided, this act would be effective when it becomes law.

*Brian Gwyn, counsel to House Judiciary 1 Committee, substantially contributed to this summary.*